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Supreme Court of the United States

OCTOBER TERM, 1955

No. 268

ELWOOD LOWELL DIERCKS,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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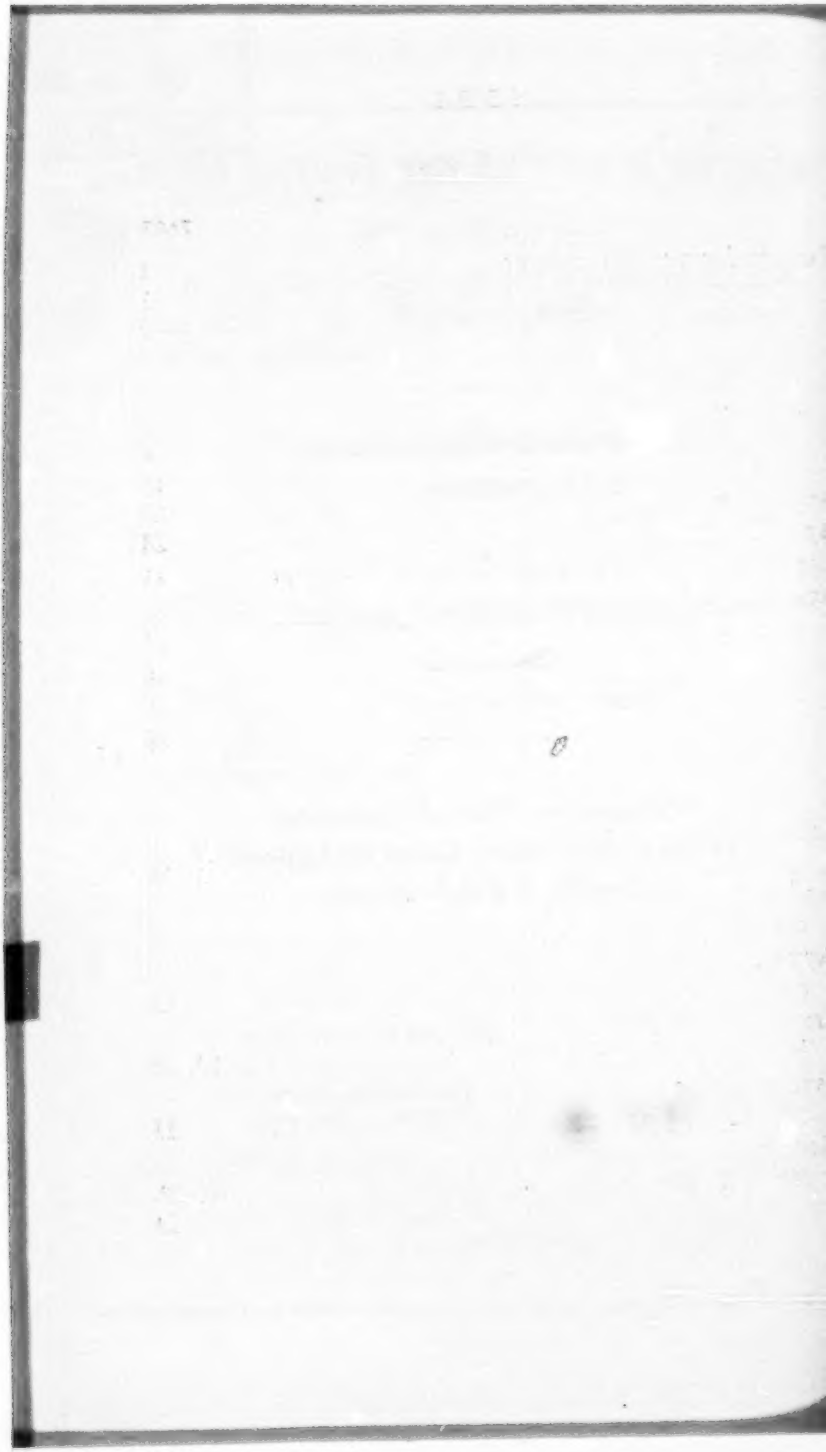

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Supreme Court of the United States

OCTOBER TERM, 1955

No.

ELWOOD LOWELL DIERCKS,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming the judgment of the United States District Court for the Eastern District of Illinois, convicting the petitioner of a violation of the Universal Military Training and Service Act and sentencing him to the custody of the Attorney General.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is printed as Appendix A to this petition (page 16, *infra*).

The opinion of the District Court is not reported. It is printed in the record of the court below, a copy of which accompanies the petition. See it at pages 125-131.

JURISDICTION

The judgment of the Court of Appeals was entered on June 10, 1955. (See Appendix B to this petition, page 23, *infra.*) A petition for rehearing was filed, which was denied on July 18, 1955. (See Appendix C to this petition, page 24, *infra.*) The time for filing this petition for writ of certiorari expires August 17, 1955. This petition for writ of certiorari is filed within the time. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). (See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.) The District Court had jurisdiction under 18 U. S. C. § 3231.

QUESTIONS PRESENTED

I.

Whether the local board arbitrarily and unreasonably refused to consider the request to reopen in a proper manner so as to oust the board of jurisdiction to proceed further, because it considered the request to reopen on the basis that it was not "mandatory for them" to reconsider the case.

II.

Whether petitioner was denied a full and fair hearing contrary to procedural due process of law on a consideration of his request for reopening because the illegal statewide policy of discrimination against Jehovah's Witnesses of the State Director of Illinois and his unfair statements to the local board destroyed the right of the petitioner to the independent judgment of the members of the local board in passing upon his request to reopen his case, which

was duly made pursuant to the Selective Service Regulations.

STATUTES AND REGULATIONS INVOLVED

Section 6(g) of the Universal Military Training and Service Act, providing for the exemption of regularly and duly ordained ministers of religion, is involved. (50 U. S. C. App. § 456(g)) This statute is printed in full in Appendix D, *infra,* page 25. Section 1(c) of the Universal Military Training and Service Act (50 U. S. C. App. § 451(c)), providing "fair and just" classification and selection, is involved. This statute appears in full in Appendix D, *infra,* page 25. Section 1622.1(d) of the Selective Service Regulations, prohibiting discrimination, is involved. Section 1625 of the Selective Service Regulations, in reference to reopening of the classification, is involved (32 C. F. R. § 1625). Pertinent portions of this section of the regulations appear in Appendix D, *infra,* p. 26.

STATEMENT OF THE CASE

Petitioner was indicted for failure to comply with an order of his local board directing him to do civilian work contributing to the maintenance of the national health, safety and interest. [R. 46] He pleaded not guilty and proceeded to trial before the district judge, waiving a jury. [R. 3, 8-9] At the end of all the evidence he made a motion for judgment of acquittal. [R. 117-123] The motion was denied and he was convicted, being sentenced to two years in the custody of the Attorney General. [R. 124, 125-133] Petitioner was sentenced to the custody of the Attorney General for a period of two years. [R. 124] He timely appealed his case. [R. 133-134] The Court of Appeals affirmed.

Petitioner was born April 4, 1927. [R. 42] He filed a classification questionnaire with his local board claiming

exemption as a minister of religion. [R. 48] The evidence showed that he was a part-time minister and was not preaching full time. He was pursuing his ministry incidental to full-time secular work. [R. 50-53] The local board ultimately classified him as a conscientious objector when he filed his conscientious objector claim. [R. 48, 56-60] After a personal appearance Diercks appealed his case to the appeal board. [R. 48-66-67, 69] Following the Department of Justice investigation he was classified by the appeal board as a conscientious objector, which made him liable for the performance of civilian work. [R. 84-86]

On October 7, 1952, after his case was returned from the appeal board, he requested the local board to reopen his case on the grounds that he had been recently appointed as a full-time pioneer minister of Jehovah's Witnesses. [R. 79-80] The local board on October 22, 1952, wrote a letter to the State Director asking "if it is mandatory" for the board to reopen the case and reclassify petitioner as a minister of religion. [R. 88] The State Director on October 30, 1952, advised the board "it is not mandatory to classify this subject IV-D based on the information provided unless, in the opinion of the local board, the registrant is qualified." [R. 89]

Diercks was called to appear before the board on November 18, 1952, to discuss filling out his conscientious objector special work report. [R. 49, 90] This hearing was on November 18, 1952. The local board also orally discussed his request to reopen, which was still pending and not yet finally determined. The board members "said that they were not going to re-open my classification for the simple reason that they were given instructions by the Chicago office [the State Director of Illinois] not to give any one of Jehovah's Witnesses a 4-D classification under any circumstances and they said no matter what you do or what you say we will not give you a 4-D." [R. 24]

On November 19, 1952, the local board wrote Diercks:

"Your letter of October 7, 1952 requesting a reclassi-

fication to 4-D was reviewed by the Board at their meeting on October 21, 1952. It was decided at that meeting to write to State Headquarters for an opinion.

"The opinion was received and reviewed prior to a personal interview with you at the meeting of the Board November 18, 1952. The Board orally told you that they would not reopen your classification of I-O. In their opinion you do not qualify for the classification of 4-D." [R. 90]

Diercks complained to the State Director about the local board's refusing to reopen his case because they decided it was not mandatory. The State Director wrote Diercks on December 2, 1952. Among other things he stated: "There is nothing contained in the regulations which makes it mandatory that a local board or appeal board classify a registrant as a minister, if in the opinion of the members themselves, they do not feel that the registrant qualifies." [R. 93]

Petitioner on December 8, 1952, wrote a letter to the local board complaining about the statement of the local board made on November 19, 1952, wherein it quoted the State Director. Diercks quoted the board in his letter: "When I appeared before the local board the evening of November 19, 1952 I was attempting to give you information of the proof of my ministry and the amount of time I devote to my ministry. The remark was made that no matter what I would say you could not give me a 4-D because the Chicago Office of Selective Service had issued and [sic] order that you were not to recognize Pioneer (full time) ministers of the Watchtower Bible & Tract Society, Jehovah's Witnesses, as ministers of religion and that under no circumstances under present directives could you give me a 4-D." [R. 95-96]

* * *

At the present time I devote forty to sixty hours per *week* in my preaching work which includes house-to-house missionary work, studying, preparing and giving sermons,

conducting and attending congregational meeting, and performing various incidental services relative to my ministry. My preaching work is the dominating factor in my life and any other work I may need to engage in to sustain me in my ministry is relatively unimportant and at no time do I let it interfere with my regular ministry work." [R. 96]

The local board on December 11, 1952, wrote the State Director that petitioner "is not entitled to the 4-D classification" and they refused to reopen the case. [R. 99] The State Director ordered the local board to notify the petitioner of its refusal to reopen pursuant to Section 1625.4 of the Selective Service Regulations. [R. 100] Petitioner was finally notified on January 7, 1953, of the refusal to reopen and reconsider. [R. 100]

The local board, over two months after refusing to reopen the case, on March 23, 1953, ordered petitioner to report for work at the state hospital on April 2, 1953. [R. 112-113] Petitioner reported but refused to perform civilian work. [R. 116-117]

REASONS FOR GRANTING THE WRIT

I.

The local board in considering the request to reopen was of the opinion that it was unnecessary to reopen and to reconsider the classification because reopening was not mandatory. This was an arbitrary and capricious ruling. It was unreasonable and constituted an abuse of the discretion conferred on the local board. The board did not exercise its discretion but arbitrarily and capriciously refused to carry out its duties under Section 1625 of the Selective Service Regulations.

The court below held that the refusal to reopen because the board was of the opinion that it was not mandatory did not constitute a denial of procedural due process of law.—See the opinion, *infra*, page 16.

The holding of the court below is in direct conflict with

the holding in *Olvera* v. *United States*, No. 15,260, decided June 17, 1955, by the United States Court of Appeals for the Fifth Circuit. In the *Olvera* case the court said:

"In the light of these reflections and of the recent decisions of the Supreme Court, including those of the district and circuit courts following their teachings, we think it clear: that the action of the board in this case, in refusing, not for the reason stated in Witmer's case that the showing made did not entitle Witmer to a reopening, but for the stated reason, because reopening was not mandatory—in short "we won't reopen because we don't have to," the request of appellant to reopen and reconsider his application as a full time minister, was arbitrary and unreasonable and ousted it of its jurisdiction to proceed further against him until his request was granted or, for a proper reason, refused; and that the imposition by the court of a sentence of imprisonment upon him for disobedience of this order deprived him of his liberty without due process and in violation of law."

It is plain that the holding in this case is diametrically opposed to the holding of the Fifth Circuit in the *Olvera* case. This conflict of decisions by the two Courts of Appeals on the same matter requires that this Court should grant a writ of certiorari for the purpose of settling the conflict of decision.

In the event the Court fails to find a conflict, it is submitted that there is involved an important question of federal law that has not been determined but that ought to be decided by this Court.

II.

The State Director of Selective Service denied the petitioner procedural due process of law when, by discrimination against Jehovah's Witnesses, he caused the local board on consideration of the request to reopen to be swayed by his prejudice against the full-time pioneer ministers of Jehovah's Witnesses, which resulted in the denial of rights

guaranteed by the regulations because of discrimination against Diercks for his membership in a class or group rather than the Board's deciding the case on an individual basis.

The local board, from the first time that the request to reopen was pressed by petitioner, communicated with the State Director. As petitioner repeatedly renewed his request to reopen the State Director each time aggravated the denial of petitioner's rights. It is undisputed that because of the State Director's opinion on reference to him of the case by the local board, the local board said that no matter what petitioner could say the local board would not consider him eligible to claim the IV-D classification and that the State Director did not recognize full-time pioneer ministers of the Watchtower Society and Jehovah's Witnesses as ministers of religion. The board told petitioner "under no circumstances under present directives could they give me a IV-D" classification. [R. 24, 95-96]

The court below held that this type of discriminatory consideration of the case did not constitute a denial of procedural due process of law contrary to the regulations.

The court below disregarded Section 1622.1(d) of the Selective Service Regulations. (See page 25, *infra.*) The court below did not give effect to Section 1(c) of the Universal Military Training and Service Act. (50 U. S. C. App. § 451(c), page 25, *infra.*)

The holding of the court below was in direct conflict with *Niznik* v. *United States*, 6th Cir., 1950 184 F. 2d 972. In that case the undisputed evidence of the registrant was that they "told me that so far as Jehovah's Witnesses were concerned they weren't going to give them a IV-D. . . . As far as Jehovah's Witnesses are concerned no IV-D for them." The Court of Appeals for the Sixth Circuit referred to the exemption provisions of the Selective Service Regulations for ministers of religion. The court then concluded that notwithstanding the fact that Niznik was a part-time minister and not a full-time minister, he was denied pro-

is that if there has been made a prima facie showing the registrant will get an opportunity to have his case reconsidered and be reclassified so that he may take the new state of facts to the appeal board. In this way only may the appeal board have an opportunity to pass upon the merits of the prima facie case.—See *United States* v. *Vincelli*, 2d Cir., 1954, 216 F. 2d 681; *Berman* v. *Craig*, 3rd Cir., 1953, 207 F. 2d 888, 890-891; *United States* v. *Hinkle*, N. D. Cal. N. D., No. 11067, April 8, 1954; *United States* v. *Williams*, D. Conn., No. 8917, April 2, 1954; *United States* v. *Lacasse*, S. D. Cal. C. D., No. 23222-Ph, Jan. 13, 1954.

It should be remembered that Section 1625 of the Selective Service Regulations pertaining to reopening is not a classification section of the regulations. It pertains to a procedurally guaranteed right. When the local board proceeded to consider whether it should reopen the case solely if it were to reach the opinion that it was mandatorily required to reclassify Diercks as exempt as a minister of religion, it was a violation of the procedural right. The board did not legally undertake to exercise the responsibility placed upon it pursuant to Section 1625 of the Selective Service Regulations. It resulted in the denial of procedural due process of law.

There must be a strict compliance with the requirements of procedural due process of law because there is a narrow review of the classification.—See *N. L. R. B.* v. *Cherry Cotton Mills*, 5th Cir., 1938, 98 F. 2d 444, 446; *Arndt* v. *United States*, 5th Cir., 1955, 222 F. 2d 484, 487-488; *Olvera* v. *United States*, Fifth Circuit, No. 15,260, June 17, 1955.

The courts have uniformly held that a failure to comply strictly with the procedural regulations is fatal to a draft board order.—*Ver Mehren* v. *Sirmyer*, 8th Cir., 1929, 36 F. 2d 876, 881; *United States* v. *Zieber*, 3rd Cir., 1947, 161 F. 2d 90, 92; Ex parte *Fabiani*, E. D. Pa., 1952, 105 F. Supp. 139, 147-148; *United States* v. *Graham*, N. D. N. Y., 1952, 108 F. Supp. 794, 797; *Bejelis* v. *United States*, 6th Cir., 1953, 206 F. 2d 354, 458; *Davis* v. *United States*, 6th Cir.,

1952, 199 F. 2d 689; *Olvera* v. *United States*, 5th Cir., No. 15,260, June 17, 1955; see also *Sicurella* v. *United States*, 348 U. S. 385 (1955); *Gonzales* v. *United States*, 348 U. S. 407 (1955).

The court below erroneously concluded that Diercks was not entitled to procedural due process of law because he did not establish as a matter of law his right to the exemption as a minister of religion. In considering whether Diercks was entitled to be classified as a minister of religion the court below committed errors of fact.

On page 4 of the opinion the court below states: "At no time did Diercks show any reduction in secular work as was the case of the registrant in *Dickinson* v. *United States*, 346 U. S. 389." Again the court below states, on page 5 of the slip opinion, as follows: "In no part of the proceedings in registrant's attempt to reopen the classification did defendant show a decrease in his secular activities." (See page 21, *infra*.)

The undisputed evidence shows that during the reopening proceedings Diercks did show that he had decreased his hours in secular employment. The reopening proceedings began on October 7, 1952, when he requested a reopening. [R. 84-86] Various hearings were had between this date and January 7, 1953, the date of the final order refusing to reopen. [R. 100] On November 18, 1952, a reopening hearing was conducted at which Diercks told the board he could not take a 40-hour-per-week job because he would have to quit pioneering and stated that he was then "working on the average of fifteen hours per week in my secular work." [R. 24] He changed from working 40 hours per week to working only 15 hours per week in secular work. [R. 24] Formerly he worked all of each day in secular employment. After becoming a pioneer he devoted only five mornings or about 3½ hours each day of each week to secular work. The file shows that during the reopening proceedings he showed the board that he devoted his afternoons and evenings to preaching and also his Saturdays and Sundays.

He showed, therefore, that he reduced his secular work materially, that is, from full-time to part-time work.

The performance of only 15 hours per week of secular work is not enough to justify a holding that his vocation of the ministry was incidental to secular work. It shows that his secular work was entirely incidental to his vocation of the ministry. It was not sufficient to say that he did not make a prima facie showing of exemption on the request for reopening. There are a multitude of cases holding that the doing of fifteen hours per week of secular work by a minister is not enough to distinguish *Dickinson* v. *United States,* 346 U. S. 389 (1953).—See *Shepherd* v. *United States,* 9th Cir., 1954, 217 F. 2d 942; *Hull* v. *Stalter,* 7th Cir., 1945, 151 F. 2d 633; *Schuman* v. *United States,* 9th Cir., 1953, 208 F. 2d 801; *Jewell* v. *United States* and *Thoman* v. *United States,* 6th Cir., 1953, 208 F. 2d 770; *Hacker* v. *United States,* 9th Cir., 1954, 215 F. 2d 575; *Brown* v. *United States,* 9th Cir., 1954, 216 F. 2d 258; *United States* v. *Benzing,* W. D. N. Y., 1954, 117 F. Supp. 598; *United States* v. *Lowman,* W. D. N. Y., 1954, 117 F. Supp. 595; *United States* v. *Blue,* N. D. Ind., No. Cr. 1964, July 7, 1954; *United States* v. *Millett,* D. Mass., No. 53-263, Dec. 9, 1953.

In its opinion, the court below said ". . . there was no proof before the board, as a part of the proceedings to reopen the classsification, that registrant was carrying out the duties or putting in the hours required by such appointment" as a pioneer. (See page 22, *infra.*) In his letter of October 7, 1952, Diercks, after mentioning his pioneer appointment, said that he did not irregularly or incidentally preach but that he preached "as a vocation" since his appointment as a pioneer. [R. 81-83] It is significant that the State Director, apparently informed by the local board, stated that Diercks preached 100 hours per month as a pioneer full-time minister. [R. 89]

At the time of his original classification and long before his request to reopen, Diercks showed that he was a part-time minister. He showed that he preached from the pulpit

each Sunday and performed other ministerial duties incidental to his full-time secular work. [R. 63, 67, 71] After his appointment as a full-time minister many months later, he showed that he devoted from 40 to 60 hours per week to his ministry. [R. 96] This was not less than 160 and not more than 240 hours per month that he devoted to his full-time job of the ministry. This was more hours devoted to his ministry than were devoted to the same ministry by Dickinson.—*Dickinson* v. *United States*, 346 U. S. 389 (1953).

These hours included his 100 hours per month devoted to the pioneer preaching in the field and the rest of the time devoted to study, preparation for the ministry, ministerial duties at the meetings and his pulpit preaching in the local congregation. He was the man in his congregation of Jehovah's Witnesses that occupied the same position as did Dickinson in his congregation. Diercks was an assistant presiding minister and full-time pioneer minister devoting 160 to 240 hours per month. Dickinson was a senior or chief presiding minister and full-time pioneer minister devoting no more time to his ministry than does Diercks. The court below has done to Jehovah's Witnesses what the Supreme Court has said should not be done to the group: it has left the congregation without a cleric.

It is submitted that Diercks made a prima facie showing before the local board that entitled him to a fair and honest consideration of his claim to have his case reopened and reconsidered and that entitled him to a new classification at least so that he could take an appeal to the appeal board. He was entitled to have the appeal board reconsider whether he had made a prima facie showing of change of status from that of a part-time minister to a full-time minister. When he was denied this right of appeal by the refusal to reclassify he was denied a procedural right guaranteed by Section 1625 of the Selective Service Regulations.

The holding of the court below is a decision upon a

very important question of law. It should be remembered that Section 1625 of the Selective Service Regulations is not confined in its operation to ministers of religion. Persons who have been newly appointed judges or recently elected governors are entitled to make use of this regulation. Persons who have changed employment so as to be engaged in essential industry—of which there are millions —likewise are entitled to exercise their rights under this procedural regulation. There are large numbers of people throughout the entire United States affected by the ruling of the court below in this case, so that the question is of necessity a very important one.

It cannot be said to be isolated or localized. Certain it is that many thousands—if not hundreds of thousands —of registrants who are changing their status would be prejudiced and denied rights guaranteed by Section 1625 of the Selective Service Regulations if it be the law that a registrant is not entitled to the exercise of rights under the reopening regulations unless the board is of the opinion that it is mandatory to reclassify the registrant as exempt, rather than merely reclassify him denying the exemption, to entitle him to his right of appeal. Because of the extreme importance of this question it is necessary that this Court grant the writ of certiorari and take the case in for argument and decision.

CONCLUSION

For the reasons above stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

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APPENDIX A

Opinion of Court Below

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 11345. October Term, 1954—April Session, 1955.

United States of America,
Plaintiff-Appellee,
vs.
Elwood Lowell Diercks,
Defendant-Appellant.

Appeal from Judgment of the United States District Court for the Eastern District of Illinois.

June 10, 1955.

Before Duffy, *Chief Judge,* and Lindley and Swaim, *Circuit Judges.*

Duffy, *Chief Judge.*

Defendant was convicted of a violation of the Universal Military and Training Act by reason of his refusal to perform certain assigned civilian work. On this appeal defendant claims 1) he was denied due process of law on consideration of his request for re-opening because he did not have the independent judgment of the members of the local board in passing on his request, and because of cer-

tain advice given by the State Director upon inquiry being made by the local board; and 2) he was denied procedural due process because the local board refused to reopen his classification and re-classify him.

On October 12, 1948, defendant filed his classification questionnaire in which he made claim and represented as follows: that he was a minister of religion; he was a regularly ordained minister of Jehovah Witnesses; he was working forty hours per week as a farm laborer for which he was paid $35 per week, and has been engaged continuously in farm work since 1945; the total value of products sold from the farm during the last crop year was $10,000.00; that his main occupation is the ministry. At the request of defendant, the board furnished him a special form for conscientious objector which defendant later executed and returned to the board.

On December 29, 1948, defendant was classified I-A. Defendant wrote a letter requesting a personal appearance before the board. This request was granted. On April 26, 1949, the board classified defendant as a conscientious objector and he was given a IV-E classification. On December 18, 1950, the local board changed his classification to I-A-O. Defendant then wrote a letter requesting another personal appearance before the board, and he was granted this privilege. He made an appearance before the board on January 11, 1951, at which time he stated he was an ordained minister. On January 11, 1951 the board classified defendant in IV-E. On December 18, 1951, due to a change in statute and regulations, the local board changed his classification to I-O. Under this classification defendant was liable to perform civilian work as a conscientious objector. On December 26, 1951, defendant requested another personal appearance before the board, and on January 24, 1952 he made a personal appearance. At that time he stated that he had been engaged in the insurance business with his father; that he had to keep his car going and himself presentable, and that was the reason for his secular

work. The board told him that the ministry was his avocation and his secular work was his vocation. On January 24, 1952, the local board again classified defendant as a conscientious objector and placed him in Class I-O.

Diercks appealed his classification. On February 5, 1952 he filed with the local board a certificate of ordination signed by an official of the Watchtower Bible and Tract Society, Inc. Dierck's file was forwarded to the Appeal Board on February 8, 1952. On September 11, 1952 the Appeal Board classified Diercks as a conscientious objector. On October 7, 1952, defendant requested the local board to reopen his case, claiming that on October 1, 1952 he was appointed a full-time minister. He filed his certificate of appointment as a Pioneer with the board, and told them that he was required to preach a minimum of one hundred hours per month.

On October 14, 1952, Diercks filed the Special Report for Class I-O Registrants. He certified that the only type of civilian work he would do would be in the service of Watchtower Bible and Tract Society. On October 22, 1952 the local board wrote a letter to the State Director asking if it was mandatory for the board to give Diercks a minister's classification on the basis of his claimed appointment as a Pioneer. State Director replied, "It is not mandatory to classify this subject IV-D based on the information provided, unless, in the opinion of the local board the registrant is qualified." The letter also pointed out that a Pioneer of Jehovah Witnesses is required to preach one hundred hours a month, and that registrant sells insurance as a means of livelihood. After receipt of the letter from the State Director, the local board met and decided not to reopen the classification of I-O because, in the opinion of the board, registrant did not qualify for the classification IV-D.

Diercks had a meeting with the board and a representative of the State Director. On March 23, 1953, the local board ordered Diercks to report for civilian work at the

the information supplied about Diercks 100 hours per month did not constitute a full-time vocation.

Undoubtedly, the sentence in the State Director's letter which defendant seized upon as the basis for his claims in this Court was too broadly stated, but as we have heretofore pointed out, the same letter unmistakably announced that the judgment of the local board was the controlling factor.

Congress has determined as a matter of national policy, that the findings and classification made by the Selective Service Board and the Appeal Board are final. 50 U. S. C. App. (1952 ed.) §460(b)(3). We think it is still the law of the land that the Courts do not sit as courts of review, and that it is not within our province to substitute our judgment of the facts for that of the board. We think it is still the law and in accord with the intent of Congress that we do not sit to correct the board's errors of law unless they are so arbitrary and capricious as to destroy the jurisdiction of the board.

We recognize that at times language of or actions by the Supreme Court, in certain cases, seem difficult to reconcile with the principles just stated. However, the decision in *Estep* v. *United States,* 327 U. S. 114, has not yet been repudiated. The Court there stated the rule to be, pp. 122-123: "The provision making the decisions of the local boards 'final' means to us that Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. It means that the courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant."

In no part of the proceedings in registrant's attempt to reopen the classification did defendant show a decrease in

his secular activities. Although registrant had been appointed a "Pioneer" minister there was no proof before the board, as a part of the proceedings to reopen the classification, that registrant was carrying out the duties or putting in the hours required by such appointment. The board, undoubtedly, had in mind registrant's statement that in order to keep his automobile running and himself presentable, he was putting in a full work-week selling insurance. We are in no position to say that the judgment of the board was not an allowable judgment of reasonable men. We think the Board did not lose its jurisdiction or act beyond it.

JUDGMENT AFFIRMED.

APPENDIX B

JUDGMENT OF COURT BELOW

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Friday, June 10, 1955

Before:

Hon. F. Ryan Duffy, Chief Judge
Hon. Walter C. Lindley, Circuit Judge
Hon. H. Nathan Swaim, Circuit Judge

No. 11345

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. ELWOOD LOWELL DIERCKS, Defendant-Appellant	Appeal from Judgment of the United States District Court for the Eastern District of Illinois

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This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, and was argued by counsel.

On consideration whereof: It is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

APPENDIX C

ORDER DENYING PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Monday, July 18, 1955

Before:

Hon. F. Ryan Duffy, Chief Judge
Hon. Walter C. Lindley, Circuit Judge
Hon. H. Nathan Swaim, Circuit Judge

No. 11345

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

ELWOOD LOWELL DIERCKS,
Defendant-Appellant.

Appeal from Judgment of the United States District Court for the Eastern District of Illinois

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It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, DENIED.

APPENDIX D

Statutes and Regulations Involved

Section 1(c) of the Act

Section 1(c) of the Universal Military Training and Service Act (50 U.S.C. App. §451(c)) provides:

"The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."—June 24, 1948, ch. 625, title I, §1, 62 Stat. 604, amended June 19, 1951, ch. 144, title I, §1(a) 65 Stat. 75.

Section 6(g) of the Act

Section 6(g) of the Universal Military Training and Service Act (50 U.S.C. App. §456(g)) provides:

"Regular or duly ordained ministers of religion, as defined in this title, and students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, or who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been preenrolled, shall be exempt from training and service (but not from registration) under this title.—June 24, 1948, ch. 265, title I, § 6, 62 Stat. 609; Sept. 27, 1950, ch. 1059, § 1 (6), 64 Stat. 1074; June 19, 1951, ch. 144, title I, § 1 (1-q), 65 Stat. 83.

Section 1622.1(d) of the Regulations

Section 1622.1(d) of the Selective Service Regulations (32 C.F.R. §1622.1(d)) provides:

"In classifying a registrant there shall be no discrimination for or against him because of his race, creed, or color, or because of his membership or activity in any labor, political, religious, or other organization. Each such registrant shall receive equal justice."

Part 1625 of the Regulations

"REOPENING AND CONSIDERING ANEW REGISTRANT'S CLASSIFICATION

"1625.1 Classification Not Permanent.—(a) No classification is permanent.

"(b) Each classified registrant and each person who has filed a request for the registrant's deferment shall, within 10 days after it occurs, report to the local board in writing any fact that might result in the registrant being placed in a different classification such as, but not limited to, any change in his occupational, marital, military, or dependency status, or in his physical condition. Any other person should report to the local board in writing any such fact within 10 days after having knowledge thereof.

"(c) The local board shall keep informed of the status of classified registrants. Registrants may be questioned or physically or mentally re-examined, employers may be required to furnish information, police officials or other agencies may be requested to make investigations, and other steps may be taken by the local board to keep currently informed concerning the status of classified registrants.

"1625.2 When Registrant's Classification May Be Reopened and Considered Anew.—The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, if such request is ac-

companied by written information presenting facts not considered when the registrant was classified, which, if true, would justify a change in the registrant's classification; or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such registrant an Order to Report for Induction (SSS Form No. 252), unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control.

"1625.3 When Registrant's Classification Shall Be Reopened and Considered Anew.—(a) The local board shall reopen and consider anew the classification of a registrant upon the written request of the State Director of Selective Service or the Director of Selective Service and upon receipt of such request shall immediately cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant.

"(b) The local board shall reopen and consider anew the classification of a registrant to whom it has mailed an Order to Report for Induction (SSS Form No. 252) whenever facts are presented to the local board which establish the registrant's eligibility for classification into Class I-S because he is satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning.

"1625.4 Refusal to Reopen and Consider Anew Registrant's Classification.—When a registrant, any person who claims to be a dependent of a registrant, any person who has on file a written request for the current deferment of the registrant in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the

information accompanying such request fails to present any facts in addition to those considered when the registrant was classified or, even if new facts are presented, the local board is of the opinion that such facts, if true, would not justify a change in such registrant's classification, it shall not reopen the registrant's classification. In such a case, the local board, by letter, shall advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and shall place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required.

"CLASSIFICATION ANEW

"1625.11 Classification Considered Anew When Reopened.—When the local board reopens the registrant's classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened.

"1625.12 Notice of Action When Classification Considered Anew.—When the local board reopens the registrant's classification, it shall, as soon as practicable after it has again classified the registrant, mail notice thereof on Notice of Classification (SSS Form No. 110) to the registrant and on Classification Advice (SSS Form No. 111) to the persons entitled to receive such notice or advice on an original classification under the provisions of section 1623.4 of this chapter.

"1625.13 Right of Appeal Following Reopening of Classification.—Each such classification shall be followed by the same right of appearance before the local board and

the same right of appeal as in the case of an original classification.

"1625.14 Order to Report for Induction to Be Canceled When Classification Reopened.—When the local board has reopened the classification of a registrant, it shall cancel any Order to Report for Induction (SSS Form No. 252) which may have been issued to the registrant. If, after the registrant's classification is reopened, he is classified anew into a class available for service, he shall be ordered to report for induction in the usual manner."